SUPREME COURT, U. S.

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in the Supreme Court of the United States

OCTOBER TERM, 1970

No. 625

ROBERT C. BIRMELIN,

Petitioner,

vs.

RAY BOYMER and MARY BOYMER, et al.,

Respondents.

PETITION FOR REHEARING

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Petitioner, ROBERT C. BIRMELIN, prays that this Honorable and highest Court will entertain this Petition for Rehearing on the Court's Order entered November 23, 1970, and upon a prayerful consideration of the matter issue a Writ of Certiorari.

STATEMENT

This Court denied the Petition for Writ of Certiorari on November 23, 1970. The Petitioner asks for a reconsideration of the Petition as the denial of the Petition is a denial of basic federal constitutional protection to attorneys-at-law.

The issue is simple: Is an attorney entitled to the protection of due process and equal protection of the law in an appeal in the State Appellate Courts. The Respondents did not and the Petitioner submits they could not take issue with the merits of the Petition. The Petitioner was in fact denied due process and equal protection in his appeal.

Mr. Justice Black announced the judgment of this Court in *Griffin* v. *Illinois*, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585 (1956). The *Griffin* opinion held that two convicts who were convicted of armed robbery were entitled to the protection of due process and equal protection in their State appeal. Why then is the Petitioner who is an attorney-at-law not so entitled? Equal protection not only applies to the poor and imprisoned, it also applies to the not poor and not imprisoned!

The Petitioner can only conclude that this Court denied his Petition on the grounds that his complaint about his deprivation of constitutional rights was not framed in the exact words that: "the Petitioner demands his rights to due process and equal protection under the Fourteenth Amendment to the United States Constitution." In answer to that argument, the Petitioner submits that this Court has never before held that there are any magic

words, magic phrases or other constitutional mumbo jumbo required to specially set forth a deprivation of due process and equal protection.

This Court quoted from an earlier opinion by Justice Harlan in *Green Bay & M. Canal Co. v. Patten Paper Co.*, 172 U.S. 58, 19 S.Ct. 97 (1898), and stated:

> " . . . . . no particular form of words or phrases has ever been declared necessary in which the claim of federal rights must be asserted." (Id. 19 S.Ct. 100).

This Court has held that a Petitioner need not even cite the due process clause to invoke this Court's jurisdiction in *Braniff Airways* v. *Nebraska State Board of Eq. E. A.*, 347 U.S. 590, 174 S.Ct. 757:

> "Though inexplicit, we consider the due process issue within the clear intendment of such contention and hold such issue sufficiently presented." (Id. at 74 S.Ct. 763).

The Petitioner submits that based on the principles which this Court has laid down in prior decisions that he sufficiently set forth his federal claim and this Court does have jurisdiction in this case.

The Petitioner again refers the Court to Pages 6 to 9 of his Petition in which he complained to the State Court that he was not a second-class citizen before the Appellate Court and that identical rules of Appellate review apply to cases in which lawyers are involved. Surely, that is enough to set forth a claim for due process and equal protection of the laws.

CONCLUSION

For the foregoing reasons, this Petition for Rehearing should be granted and a Writ of Certiorari issued.

CERTIFICATE OF GOOD FAITH

This Petition for Rehearing is filed in good faith and restricted to grounds set forth in Rule 58(2).

CERTIFICATE OF SERVICE

I, HAROLD MENDELOW, c o DAVID F. CERF, JR., 803 Biscayne Building, Miami, Florida 33130, DO HEREBY CERTIFY that a copy of the foregoing PETITION FOR REHEARING was mailed to HENDRICKS & HENDRICKS, Attorneys for Respondents, 1441 S. W. First Street, Miami, Florida, this 17th day of December, 1970, by mailing them a copy in a duly addressed envelope postage prepaid U. S. mail.

/s/ HAROLD MENDELOW

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